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1776 K STREET, N. W.  
WASHINGTON, D. C. 20008  
(202) 429-7000

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Federal Communications Commission  
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WRITER'S DIRECT DIAL NUMBER

(202) 429-3361

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(202) 429-7049

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Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

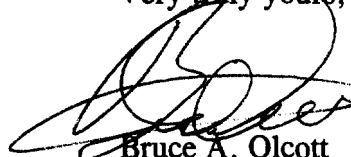
Re: *Ex parte* Presentation in IB Docket No. 96-261

Dear Mr. Caton:

On April 21, 1997, copies of the enclosed summaries of reply comments and supplement in the above-captioned proceeding were delivered to Jackie Chorney, Senior Legal Advisor to Chairman Reed Hundt, Rudolfo Baca, Senior Legal Advisor to Commissioner Rachelle Chong, Jane Mago, Senior Legal Advisor to Commissioner Susan Ness, James Casserly, Senior Legal Advisor to Commissioner James Quello, Kathryn O'Brien, International Bureau, Jonathan Stern, International Bureau, Peter Cowhey, International Bureau and Kelly Cameron, International Bureau.

Additionally, on this date, Jonathan Stern and Kelly Cameron received copies of the summaries of comments previously filed with the Commission on February 28, 1997.

Very truly yours,



Bruce A. Olcott

cc: Jackie Chorney  
Rudolfo Baca  
Jane Mago  
James Casserly  
Kathryn O'Brien  
Jonathan Stern  
Peter Cowhey  
Kelly Cameron

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**WILEY, REIN & FIELDING**

**SUMMARIES OF REPLY COMMENTS**

**SUPPLEMENT**

**IN**

**IB DOCKET NO. 96-261**

**INTERNATIONAL SETTLEMENT RATES  
FCC'S BENCHMARK PROCEEDING**

Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

April 21, 1997

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## **UNITED STATES TRADE REPRESENTATIVE ("USTR")**

### **The Global Basic Telecommunications Agreement**

- The USTR recognizes that the United States will be obligated, as of January 1, 1998, to treat basic telecommunications services and suppliers in accordance with the applicable provisions of the General Agreement on Trade and Services. (1)

### **Validity of the Benchmarks Under the WTO and MFN**

- The USTR believes the proposed benchmark rule will be consistent with national treatment obligations and can be formulated to comply with MFN obligations under the WTO. (1)
- The USTR would defend vigorously the FCC's final benchmark rule against any challenge that might be brought in the WTO. (2)

## **REPUBLIC OF INDONESIA**

### **The Use of Unilateral Action**

- As a foreign governmental body on telecommunications matters, the Indonesian Ministry of Tourism, Posts, and Telecommunications is concerned about the FCC's "unilateral" approach. (1)
- The mechanism for adopting cost-based accounting rates should be conducted through a proper multilateral forum, such as the ITU. (1)

### **Commission's Jurisdiction to Adopt Benchmarks**

- Indonesia acknowledges that while the FCC benchmark proposal is mainly directed to bind US carriers, it will indirectly bind foreign carriers and, as such, is beyond the FCC's jurisdiction. (1)
- If implemented, the proposal would infringe the principle of sovereignty which permits each government to have its own set of rules and regulations, including policies to determine telecommunications matters. (1)

### **Benchmark Methodology**

- Indonesia is concerned that the FCC has failed to consider adequately the cost factors which vary from country to country. For example, the Indonesian Universal Service Obligations, mandated by the government for the development of infrastructure, have not been taken into account. (2)
- Indonesia is "highly critical" of the FCC's categorization of countries according to GNP because of the diverse spread of cost variations even within the groupings themselves. (2)

**WILEY, REIN & FIELDING**

**SUMMARIES OF REPLY COMMENTS**

**IN**

**IB DOCKET NO. 96-261**

**INTERNATIONAL SETTLEMENT RATES  
FCC'S BENCHMARK PROCEEDING**

Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

April 7, 1997

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## **ABS-CBN TELECOM**

### **The Global Basic Telecommunications Agreement**

- The recent WTO Agreement may spur additional foreign carriers to establish affiliated international carriers in the United States. (4)

### **Benchmark Methodology**

- ABS-CBN Telecom prefers a country or carrier specific basis for setting benchmark rates. (2-7)
- The Commission's benchmark methodology fails to take into consideration the rates international carrier's pay to monopoly carriers in their home countries for call termination. (2)
- Although the Philippines is an emerging competitive success story, its continuing network construction effort requires a stable international settlement regime. (2-3)
- ABS-CBN Telecom objects to the Commission's use of undisclosed data submitted by AT&T, an interested party, for establishing benchmark rates because such data is likely to be biased and understate actual costs in the Philippines. (6-7)

### **The Use of Transition Periods**

- If the Commission acts too quickly it may block the Philippines road to successful infrastructure development. (3)

### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- The Commission is shortsighted in its belief that lowering accounting rates to benchmarks will establish a level playing field. (4)
- Foreign competing carriers are not able to cross-subsidize a new U.S. operation because the U.S. settlement rates are not enough to cover the rate charged to its monopoly carrier for local termination services. (5)
- Lower benchmark rates may indeed be counterproductive. (5)

## **ALEXIS DE TOCQUEVILLE INSTITUTION**

### **The Global Basic Telecommunications Agreement**

- The institution supports the FCC's initiative to reduce accounting rates as a necessary counterpart to the commitments made in the basic telecommunications services agreement and as a means to accelerate the transition to market-based telecommunications systems and competition. (1)
- The institution identifies several benefits of competition: 1) competitive markets experience greater growth in Telecom employment and greater growth in teledensity; 2) the introduction of competition reduces domestic and international long distance rates; 3) the introduction of competition in the U.S. increased telephone usage, cut long distance rates 60%, boosted telecom employment and led telephone carriers to develop new services. (2)
- The institution acknowledges that technological change, international agreements and the forces of competition are combining to put downward pressure on international accounting rates yet urges that artificially high rates remain in force because monopoly carriers are able to use undue market power to maintain them. As such the FCC's initiative constitutes a useful additional instrument to obtain reductions in these rates. (2-3)

### **Benchmark Methodology**

- The Commission's use of Tariff Components Prices seems a fair approximation of the cost of terminating international telephone calls because governments and carriers may respond to proposed benchmarks with actual cost data. (5)
- There are four principle benefits to the Commission's proposed benchmark methodology: 1) reduced accounting rates will end the overcharges imposed on consumers who dial into countries with monopoly phone systems; 2) lower accounting rates will drive down the rates charged by international callback operators; 3) competition will replace monopoly as the optimal way for countries to maximize telecom revenue and expand service; and 4) Market-based accounting rates will ensure equal and reciprocal market access. (4)

### **The Use of Transition Periods**

- The FCC's benchmark proceeding is a measured proposal allowing time for countries to plan and adjust. (3)

## **AT&T CORPORATION**

### **Rationale for Adopting Benchmarks**

- The comments reflect that a multi-lateral consensus has emerged that the traditional accounting rate system must be reformed because it results in settlement rates that are substantially above cost. However, AT&T also notes that the FCC's action to reduce settlement rates is favored mostly by U.S. Commenters and not foreign Commenters. (1-4)
- AT&T favors the Commission's prescription and active enforcement of settlement rates because the Commission's existing benchmarks, which have not been met by most countries more than four years after they were established, demonstrate that any new benchmarks will be widely ignored. (17-19)

### **Benchmark Methodology**

- U.S. Commenters strongly support TSLRIC as the methodology to establish mandatory settlement rates, and TCP as an interim step toward lower settlement rates. (4-6)
- Overall, the U.S. Commenters expressed different preferences concerning whether benchmarks should be set at country specific TCP or average TCP for countries in the same income category. AT&T has shown that combining both approaches insures the greatest movement toward costs. (6-7)
- TSLRIC is an appropriate and administratively manageable pricing methodology. (14-15)
- Contrary to the assertions of many foreign Commenters, tariff component prices are still far above cost. There is no justification for the claim that tariff component prices should not be based on domestic tariffs unless rebalancing has taken place. Nor should benchmarks be raised to accommodate local access surcharges or subsidies. The existence of these charges only demonstrate that local monopolies may exploit their bottlenecks to the fullest extent possible. Equally unfounded are claims by some foreign carriers that they are disadvantaged by fluctuations in exchange rates and purchasing power parity. (31-39)

### **The Use of Transition Periods**

- AT&T favors reducing the transition period suggested by the NPRM because of the general failure of foreign carriers to observe existing benchmarks and the fact that foreign countries have been on notice that settlement rates need to be reduced for at least five years, since the adoption of ITU Recommendation D.140. (8-9)

- AT&T remarks that the proposal to apply different transition periods for high middle and low income categories is met with widespread approval from both U.S. and foreign Commenters and that annual reductions in settlement rates are necessary during the transition period. (9-10)
- Those countries who claim that future network development and liberalization plans require longer transition periods should, instead, meet their needs by competitive markets and private capital or else they will continue to maintain high accounting rates. (10-14)

### **Benchmarks and the US Net Settlement Out Payment**

- Most foreign Commenters who believe that the culprit of the US high settlement outpayment are socio-economic factors, such as social habits, trade relationships or disparities in wealth, overlook the fact that the US settlement outpayment would be a minor matter if it was not laden with above cost subsidies. (20-25)
- AT&T demonstrates that its per minute settlement cost declined by five cents per minute from 1982 through 1995 and its average revenue per minute declined eight cents over the same period. Moreover, AT&T commits to reduce its US international rates to reflect fully AT&T's net cost reductions resulting from the Commission's new benchmarks. (25-28)
- Those Commenters who focused on standard international tariffs ignore the fact that AT&T offers much lower rates under international calling plans. (28-30)

### **Commission Statutory Jurisdiction to Adopt Benchmarks**

- The Commission possesses ample authority to mandate settlement rates because section 205 authorizing the Commission to prescribe just and reasonable charges applies directly to all "foreign communications." AT&T explains that neither the Communications Act nor Commission Regulations exempt contracts with foreign carriers from the Commission's jurisdiction. (39-40)
- Section 201 seem clearly to give the Commission authority to measure any applicable contract against the public interest even though one of the parties is not subject to the Commission's jurisdiction, as was the holding in RCA. (40-41)
- Prior Commission orders regulating facilities used for foreign communications are not inconsistent with and do not limit the Commission's jurisdiction over contracts with foreign correspondents. (42-43)
- Contrary to the implicit claims of a number of Commenters, the Commission's NPRM does not assert authority to modify contracts between U.S. carriers and any third party, only to the modification of intercarrier arrangements. (44-45)

### **Applying Benchmarks To Prevent Anti-Competitive Behavior**

- Cost-based settlement rates are necessary to prevent carriers providing U.S. inbound switched services over international private lines from engaging in one way bypass. Carriers may also engage in one way bypass by routing U.S. bound traffic to a U.S. facilities-based affiliate. (46-53)
- The ability of carriers to harm competition on affiliated routes can be addressed effectively through the settlements process by requiring settlement rates to be at TSLRIC as a condition of market entry. (53)

### **Validity of the Benchmarks Under the WTO and MFN**

- There is no substance to the claims by foreign carriers that the use of the NPRM to prevent anti-competitive behavior would be precluded under the GATS. (54)

## **BRAZIL, MINISTRY OF COMMUNICATIONS**

### **Rationale for Adopting Benchmarks**

- Recognizing that the Brazilian International Carrier, EMBRATEL, has had difficulty lowering accounting rates, Brazil supports the FCC position on accounting rate reduction. (1)

### **The Use of Unilateral Action**

- The FCC proposition must be discussed in a multilateral forum because settlement rates must be cost basis oriented and not unilaterally fixed. (1)

### **Benchmark Methodology**

- Brazil identifies four costs for determining settlement rates: international transmission, international switching, national extension, and subsidization. (1)
- All countries around the world have practiced subsidization as a way of financing the expansion of the telephone network. (2)

### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- The multilateral forum for setting benchmark rates would be responsible for the establishment of safeguards in order to avoid anticompetitive practices. (3)

## **CABLE & WIRELESS, PLC**

### **The Use of Unilateral Action**

- The ITU constitution and regulations require accounting and settlement rates to be established through bilateral agreement. (2-3)
- The NPRM's unilateral approach is likely to retard not promote the efforts of the international community to achieve lasting effective accounting rate reform and is likely to disrupt liberalization plans. (2,14)

### **Commission's Jurisdiction to Adopt Benchmarks**

- Cable & Wireless notes that an overwhelming majority of Commenters have demonstrated that the NPRM is inconsistent with International Law and exceeds the scope of the Commission's jurisdictional authority under the Communications Act. The Commission's statutory authority is limited to the U.S. half circuit. (2-3)
- Cable & Wireless refutes Sprint's proposed alternatives to the Commission's exercise of jurisdiction over foreign carriers, namely, 1) to pay no more to a foreign carrier than an FCC prescribed settlement rate; 2) to pay an interim rate set by the Commission without exercising its prescription power; 3) to withhold settlement payments from a foreign carrier; and 4) to cease exchanging traffic with the foreign carrier when a relevant settlement rate is too high. These proposals fail to withstand scrutiny because 1) the Commission does not have accurate and sufficient cost data regarding the operations of foreign carriers upon which to base the benchmarks, 2) the conditions under which the Commission can order a U.S. carrier to make payment arrangement at an interim rate do not exist, and 3) the public interest would not be served by the interruption of service to a foreign country. (5-8)

### **Benchmarks and the U.S. Net Settlement Outpayment**

- The NPRM is based on a fundamental misapprehension of both the causes of the net U.S. settlement deficit and its effects. (9)
- Numerous parties are concerned that the settlements deficit is caused by the traffic imbalance which, in turn, results from services promoted by U.S. carriers such as callback, refile, and home country direct. (9-10)
- The settlements imbalance is not necessarily positive or negative because net revenue from these services generally offsets the settlement deficit. (10)

- Net settlement payments made by the U.S. to foreign carriers do not necessarily constitute a subsidy because refile traffic embodies a net revenue loss for a foreign carrier and, in the cases of callback and other reverse build services, settlements payments received by foreign carriers are more than offset by the collection revenues lost as a result of not billing the call. (11)
- Many parties have demonstrated that there is no correlation between settlement rates and the collections rates paid by U.S. Consumers by IMTS. It does not logically follow that a forced reduction in settlement rates will result in a reduction of the U.S. IMTS rates. AT&T has failed to present evidence that a decline in its total average rate per minute indicates that settlement rates reduction have lowered IMTS rates for U.S. customers. To the contrary, the Commission shows that AT&T has increased collection rates while dramatic decreases in accounting rates have occurred. (12-14)
- Not only will the NPRM fail to achieve any benefits for U.S. consumers, it likely to have serious detrimental effects on liberalization. (14)

#### **The Global Basic Telecommunications Agreement**

- There is clear consensus that the international telecommunications market is being buffeted by significant change, and that if international regulatory policies are to be effective, they must take these inevitable changes into consideration. (1)



## **THE COALITION OF SERVICE INDUSTRIES ("CSI")**

### **Rationale for Adopting Benchmarks**

- CSI supports the Commission's action to reform the international settlement process as a means to reduce the costs of international accounting rates and implement greater competition in the international telecommunication services market. (4)

### **Benchmarks and the U.S. Net Settlements Outpayment**

- Although several parties suggest the major purpose of the NPRM is to lower the U.S. imbalance in settlement payments, CSI disagrees with this assessment. CSI encourages the alignment of settlement rates with the cost of providing the service as a means not only to reduce the deficit but also to lower IMTS prices. (2-3)
- The NPRM may address the amount of the outpayment, but it will not address the foreign correspondents willingness to compete. (3)

### **The Global Basic Telecommunications Agreement**

- The Commission's NPRM will complement the recent WTO agreement designed to ensure that competition and competitive market access become the rule, not the exception, in the basic telecommunications services. (2)

### **Benchmark Methodology**

- The NPRM creates benchmarks for U.S. bilateral traffic and recommends policies and methodologies for other countries to follow. (2)
- Where country-specific cost data exist, the settlement rate benchmark should be country-specific. (3)

### **The Use of Transition Periods**

- Benchmarks should be developed and implemented January 1, 1998. (3)

## **ECONOMIC STRATEGY INSTITUTE**

### **The Rational for Adopting Benchmarks**

- The Economic Strategy Institute recognizes that the United States, and indeed the world, is in a process of accelerating open markets and fostering competition. In this era of transition, settlement rates must be reduced to long run incremental costs or else a price squeeze will become a real and sizable threat to the U.S. IMTS market. (2-3)

### **Benchmark Methodology**

- Absent LRIC-based settlement rates the economic strategy institute estimates foreign firms will accumulate \$32 to 60 billion in above cost settlements that could be used to subsidize price squeeze behavior in the U.S. (2)
- The Economic Strategy Institute submits that the long run incremental costs of settlement rates for all countries is between 5 and 8 cents. It therefore recommends a settlement benchmark ceiling no greater than 9 cents in order to adequately compensate foreign firms who terminate traffic in the U.S. (2)

### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- Allowing dominant firms to enter the U.S. market through an affiliate and continue to collect above cost settlement rates could easily drive efficient U.S. firms from the IMTS market. (2)

## **GOVERNMENT OF INDIA**

### **The Use of Unilateral Action**

- India submits that the FCC does not have jurisdiction to impose changes in settlement rates unilaterally. (1)

### **Benchmarks and the U.S. Net Settlement Outpayment**

- India opposes the NPRM and states that it is incorrect to suggest that the U.S. settlement deficit results from the accounting rate not being related to cost. (1)
- The real reason for the traffic imbalance is the U.S. carriers promotion of callback, refiling and home country direct services. (1)

### **Commission's Jurisdiction to Adopt Benchmarks**

- India submits that the FCC's jurisdiction over foreign or international communication is limited to the U.S. side of the service and in keeping with the principles of comity of nations and international regulations, the FCC does not have the authority to prescribe international settlement rates. (1)

### **Benchmark Methodology**

- The methodology for setting benchmarks does not take into account the reality in India that financing Telecom infrastructure in rural and local areas requires subsidization. (2)
- TCP distorts results for India because rural and local telecom services are subsidized and their published prices are far below their cost. (2)

### **The Use of Transition Periods**

- India supports longer transition periods. (2)

## **GTE SERVICE CORPORATION**

### **The Rational for Adopting Benchmarks**

- The Commission has failed to articulate clearly and consistently the public interest it is advancing on how its proposed action will achieve its goal. (18)

### **The Global Basic Telecommunications Agreements**

- In light of the world's dedication to an ever-broader competitive environment the NPRM is unnecessary and unwise. (3-5)
- The GBT will foster high levels of competition and accelerate the trend toward market-based rates. (3)

### **Benchmarks and the U.S. Net Settlement Outpayment**

- There is no evidence that the Commission's proposed prescription of lower settlement rates will reduce U.S. collection rates or benefit U.S. customers. In fact, numerous examples exist where collection rates have been increasing at the same time that settlement rates have been dropping. (18-19)
- Many telecommunications developments alter traffic flows and increase the U.S. outpayment, for example, callback, reorigination and refiling. (20-21).

### **The Use of Unilateral Action**

- The aggressive unilateral approach of the NPRM may deter signatories from improving or ratifying their offers to the GBT. (4)

### **The Commission's Jurisdiction to Adopt Benchmarks**

- There is virtual unanimity of Commenters that the FCC's unilateral imposition of settlement rates exceeds its jurisdiction under the Communications Act and violates the ITU Treaties and Regulations. (6)
- The NPRM is distinguishable from RCA because the principal objective of the NPRM is to change the behavior of foreign carriers, not U.S. carriers or U.S. consumers, and foreign carriers are beyond the Commission's jurisdiction. (8-10).
- The Commission owes the public a detailed discussion of its asserted jurisdiction. (11-12)

### **Validity of the Benchmark under the WTO and MFN**

- The NPRM's proposed establishment of three country categories, three accounting rate benchmark ranges and three transition periods will result in different WTO members being treated differently in probable violation of MFN. (16-17)
- GTE recommends that the Commission ensure any action it adopts in this proceeding is consistent with MFN. (17)

### **Benchmark Methodology**

- The Commission's proposed classification of countries fails to properly differentiate among underdeveloped countries. By merging the two middle groups, the FCC has lumped together countries with vastly different income levels. (23-24)
- The FCC admittedly lacks the necessary data to evaluate the foreign cost of terminating a call. The FCC's reliance on AT&T cost data is improper because it is a poor proxy for estimating costs of operators in developing countries. (24-25)
- GTE opposes reliance on either TSLRIC or TCP for evaluating a foreign carrier's costs. TSLRIC may be a test for a cross subsidy but will not produce sufficient revenue to recover all relevant costs. Likewise, TCP does not reflect actual cost or the need to rebalance the domestic tariffs of foreign countries. (25-27)

### **The Use of Transition Periods**

- A reasonable time frame for developing countries to achieve cost-based settlement rates is 5 to 8 years, not the 2 to 4 years proposed by the Commission. This time frame is supported by the complex nature of liberalization processes. (29)
- Failure to allow developing countries to control and implement their privatization and liberalization plans may increase resentment towards the U.S. and ultimately thwart progress toward open communications market. (32)
- The FCC should increase transition periods overall, or establish them on a county-by-country basis, with particular attention devoted to the obstacles faced by developing countries in liberalizing their telecommunications market. (32)

### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- The Commission's proposed use of benchmarks to address hypothetical anticompetitive behavior is unnecessary because such behavior is unlikely and has not been demonstrated to threaten U.S. Consumers. (27-28)
- A cross subsidy is not necessarily an anticompetitive act, especially if its purpose is the establishment of a new non-dominant entrant into a competitive market. (28)

## **GUYANA TELEPHONE AND TELEGRAPH LIMITED ("GT&T")**

### **Rationale for Adopting Benchmarks**

- The FCC's proposed settlement rate benchmarks may have severe adverse consequences for foreign carriers who use settlement revenues to fund domestic services and infrastructure development. (13-14)
- GT&T may not be able to recoup all or even most of the lost settlement revenues through domestic rate increases because such an increase is politically and economically infeasible in Guyana today and would force a large percentage of subscribers to leave the public switched network. (13)
- The FCC should not criticize foreign countries who impose a heavier universal service obligation upon international traffic because the FCC has itself imposed more burdensome obligations upon international traffic than upon intrastate and local traffic. In fact, the FCC rules have promoted other universal service cross subsidies. (15-16)

### **The Commission's Jurisdiction to Adopt Benchmarks**

- The FCC's proposals are inconsistent with Section 201(b). Section 201(b) does not justify prescribing settlement rate benchmarks based solely upon cost, and if it were applicable, would require the FCC to consider non cost factors, such as the impact upon service quality, universal service, and network infrastructure. (16-17)
- Under the ITU settlement rates are established by mutual agreement through bilateral negotiations between international carriers. (2)

### **Benchmark Methodology**

- GT&T believes that the FCC cannot prescribe settlement rate benchmarks as it has proposed to do, without distinguishing between foreign carriers served by undersea cables and those served exclusively by satellites. (2-4)
- The FCC lacks the necessary TCP data to adopt settlement rate benchmarks for Guyana. The FCC cannot use the IPL rate of another country as a cost proxy for GT&T's transmission component. The FCC's use of a sample group is deficient because of the absence of complete TCP data for Guyana. (4-5)

- TCP fails to accurately reflect underlying component costs including the National Extension TCP, the International Transmission TCP, and the Switching TCP. The National Extension TCP does not reflect underlying component costs and ignores the exchange rate fluctuations between countries. Regarding the International Transmission TCP, the Commission has failed to consider that joint and common costs are allocated differently to private and switched line services, and that the IPL rate in a country is often directed at a few strategic customers and therefore does not reflect the underlying transmission cost for switched international service. (6-8)
- The TEUREM study cannot be used because the underlying data and assumptions used to calculate its results are not publicly available and do not reflect the higher cost incurred by developing countries. (8)
- The TCP approach does not work if components are subsidized. (10-11)
- The FCC cannot use AT&T data as an accurate basis for prescribing settlement rates because foreign carriers in developing countries incur higher per minute costs than U.S. carriers to terminate International Switched traffic. (11-12)

## **HONG KONG TELECOM INTERNATIONAL**

### **Benchmarks and the U.S. Net Settlement Outpayment**

- It is not necessarily true that reduced accounting rates will alleviate U.S. net settlements deficits. Moreover, this deficit is not indicative of a trade problem. Many countries also have settlements deficits. The traffic imbalances could be caused by several other factors. (2)
- There is no direct relationship between settlement rates and the collection rates paid by U.S. consumers. AT&T has not supplied data related to end users which would demonstrate that settlement rate reductions result in lower IMTS rates for consumers. Indeed, AT&T data shows increases in collection rates for end users in the face of dramatic decreases in accounting rates. The NPRM, by lowering settlement rates, would simply enable U.S. carriers to increase their profit margins and net revenues. (3-4)

### **The Use of Unilateral Action**

- Hong Kong notes that Commenters overwhelmingly agree that the NPRM's unilateral approach towards the implementation of reduced settlement rates and prevention of market distortions is unwarranted. (1)

### **Commission's Jurisdiction to Adopt Benchmarks**

- Hong Kong notes that Commenters overwhelmingly argue that the FCC does not have jurisdiction and that the NPRM is counter to the principles articulated in the ITU constitution and regulations and disrupts the legitimate interests of foreign governments in advancing their chosen social policies. (8-9)
- Hong Kong states that the Commission should capitalize on the interests of many administrations and carriers to discuss seriously accounting rate reforms by addressing its issues through multilateral forums where board consensus can be obtained, thereby ensuring meaningful and lasting effects. (10-11)
- Indeed the Secretary General of the ITU has called for contributions on the accounting rate reform issue. (10)
- Accounting rate reform sponsored by the ITU will take into consideration the interest and concerns of all countries and produce a more acceptable approach than the unilateral approach of the NPRM. (11)



### **Benchmark Methodology**

- The Commission's proposal to impose accounting rate methodology and benchmarks entirely disregards the complexity of the issue of allocation of joint and common costs to achieve various legitimate policy objectives, such as universal service, economic efficiency, and tariff balancing. (9)
- The government of Hong Kong requires a delivery fee of approximately \$.29 U.S. to be paid for every inbound minute to local carriers, including those utilizing callback. The unilateral action proposed by the Commission ignores these rights and interests, and only maximizes political resistance to the NPRM's ultimate objectives. (9)

### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- The Commission's imposition of market entry conditions on foreign carriers is not warranted and may be inconsistent with MFN and National Treatment Principles embodied in the WTO agreement. (5-6)
- Any potential anticompetitive behavior by foreign carriers is inherently speculative. (6) There is simply no nexus between the enforcement mechanisms proposed in the NPRM and the problems the Commission seeks to address. (7)
- The approach of the United Kingdom toward addressing anticompetitive behavior demonstrates that effective less restrictive methods to protect against anticompetitive behavior are available and should serve as a model. (7)